

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

09/19/2001

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss  
Deputy

LC 2001-000173

FILED: \_\_\_\_\_

STATE OF ARIZONA

WILLIAM B BURKE

v.

KIMBERLY DAWN KILGORE

CRAIG W PENROD

MESA CITY COURT  
REMAND DESK CR-CCC

RULING

MESA CITY COURT

Cit. No. 703823

Charge: 1. DUI W/DRUGS OR METABOLITE IN THE BODY  
2. FAILURE TO SIGNAL W/I 100 FT PRIOR TO TURN

DOB: 05-04-1962

DOC: 02-13-2000

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on August 22, 2001. This Court has considered

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counsels' arguments, the record of the proceedings from the Mesa City Court, and the memoranda submitted by counsel.

Appellant, Kimberly Dawn Kilgore, was charged with Driving While Under the Influence of Alcohol or Drugs, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(3); Failure to Signal Within 100 Feet Prior to Turn, a civil traffic violation, in violation of A.R.S. Section 28-754(B); and Driving With an Obstructed View, a civil traffic violation, in violation of A.R.S. Section 28-893(A). Appellant filed a Motion to Suppress all evidence obtained after an allegedly improper stop and seizure by the Mesa police officers. The trial court held a hearing on Appellant's Motion to Suppress on March 7, 2001. The trial judge found that the arresting officer had a reasonable suspicion that Appellant committed a violation of A.R.S. 28-754(B) which warranted the stop and seizure of Appellant. After the trial judge's ruling, the parties submitted the issues of guilt or innocence to the court and waived their rights to a jury trial. On March 7, 2001, Appellant was found guilty of Driving While Under the Influence of Intoxicating Liquor or Drugs and found responsible of failing to signal within 100 feet prior to her turn. Appellate was sentenced the same day to serve ten days in jail, but with nine days suspended pending completion of an alcohol and drug screening, education and treatment program, Appellant was given credit for one day jail already served, Appellant was ordered to pay a fine of \$285.50. Appellant filed a timely Notice of Appeal in this case.

Appellant claims that the trial court erred in failing to suppress all evidence gathered after an unreasonable stop of Appellant. Appellant claims that the Mesa Police Officers did not have a "reasonable suspicion" which would justify the stop of Appellant's vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had

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committed, or was about to commit, a crime.<sup>1</sup> These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."<sup>2</sup> A.R.S. Section 13-3883(B) also provides in pertinent part authority for police officers to conduct a "investigative detention":

A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.<sup>3</sup> In Whren<sup>4</sup> the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable

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<sup>1</sup> Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

<sup>2</sup> United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, (1981).

<sup>3</sup> Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89(1996).

<sup>4</sup> Id.

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cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.<sup>5</sup>

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.<sup>6</sup> An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.<sup>7</sup> This Court must review those factual findings for an abuse of discretion.<sup>8</sup> Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.<sup>9</sup> This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.<sup>10</sup>

In this case the trial judge entered a detailed order denying Appellant's Motion to Suppress. The trial judge stated:

...and under these circumstances, the officer's reasonable suspicion is that A.R.S. 28-754(B) was violated on that date in question, that she did not turn -- use her turn signals within a hundred feet of the turn. And so, therefore, that is the standard that I have to go on based on Delaware v. Frost (citation omitted), which gives you the standard there, that it states there has to be a reasonable suspicion that

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<sup>5</sup> Id.

<sup>6</sup> State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, Supra.

<sup>7</sup> Id.

<sup>8</sup> State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

<sup>9</sup> State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

<sup>10</sup> State v. Gonzalez-Gutierrez, 187 Ariz. at 118, 927 P.2d at 778; State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

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a traffic law's been violated. He did have that. . . .so, therefore, I am not going to grant the Motion to Suppress.<sup>11</sup>

The trial judge's ruling is supported by the record. Mesa Police Officer Mike Guyer testified that he observed Appellant's vehicle reach the intersection and turn west.<sup>12</sup> Officer Guyer testified that Appellant did not use her turn signal at all before making the turn.<sup>13</sup> And, having further determined that a factual basis exists to support the trial court's ruling, this Court also determines *de novo* that said facts do establish a reasonable basis for the Mesa police officers to have stopped the automobile driven by the Appellant.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Mesa City Court.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all future proceedings.

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<sup>11</sup> Reporter's Transcript of March 7, 2001, at 20-21.

<sup>12</sup> Id. at 8.

<sup>13</sup> Id.